

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

RALEIGH-DURHAM AIRPORT AUTHORITY
(a/k/a RALEIGH DURHAM INTERNATIONAL
AIRPORT),

Plaintiff,

vs.

WARD TRANSFORMER COMPANY, INC.; BBC I, LLC; THE STATE OF NORTH CAROLINA; PROGRESS ENERGY, INC. (d/b/a CAROLINA POWER & LIGHT COMPANY); THE UNITED STATES OF AMERICA; THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; UNKNOWN PERSONAL REPRESENTATIVES, HEIRS, AND DEVISEES OF ROBERT E. WARD, JR., AND WIFE, VIRGINIA P. WARD; WAKE COUNTY DEPARTMENT OF TAX ADMINISTRATION; YOUNG MOORE AND HENDERSON, P.A.; ROBERT E. WARD, III INDIVIDUALLY AND AS TRUSTEE OF THE GST OVERFLOW TRUST, AS HEIR AND SUCCESSOR IN INTEREST TO THE INTERESTS HELD BY ROBERT E. WARD, JR. AND WIFE, VIRGINIA P. WARD IN THE DEEDS OF TRUST RECORDED AT BOOK 5407, PAGE 855 AND 858 OF THE WAKE COUNTY, NORTH CAROLINA, REGISTER OF DEEDS, and THOSE CERTAIN LANDS CONTAINING APPROXIMATELY 12.23 ACRES AND LYING AND BEING IN CEDAR FORK TOWNSHIP, WAKE COUNTY, NORTH CAROLINA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEING ALL OF LOT 1, CONTAINING 9.272 ACRES, MORE OR LESS AND LOT 2, CONTAINING 2.50 ACRES, MORE OR LESS, AS SHOWN ON MAP ENTITLED "RECOMBINATION PLAT FOR WARD TRANSFORMER COMPANY, INC." RECORDED IN BOOK 1999, PAGE 1944, WAKE COUNTY REGISTRY, REFERENCE TO WHICH IS

Case No. 5:19-cv-304-D

**ORDER TO DISBURSE
CONDEMNATION
DEPOSIT
-AND-
FINAL JUDGMENT IN
CONDEMNATION ACTION**

HEREBY MADE FOR A MORE ACCURATE DESCRIPTION BY METES AND BOUNDS AND FURTHER ALSO AND BEING MORE PARTICULARLY DESCRIBED BY THE BOUNDARY SURVEYS PREPARED BY MCKIM & CREED, INC. DATED MARCH 9, 2018 AND MARCH 12, 2018. ALSO, BEING THE PROPERTY CONVEYED TO WARD TRANSFORMER CO., INC. BY DEEDS RECORDED IN BOOK 1695, PAGE 73, BOOK 1730, PAGE 140, BOOK 1910, PAGE 462, BOOK 1830, PAGE 457 AND BOOK 13509, PAGE 1806, WAKE COUNTY REGISTRY AND IDENTIFIED AS TAX PARCEL ID # 0074293 AND PIN #0768731351 (6730 MT. HERMAN ROAD, RALEIGH, NC 27560) AND TAX PARCEL ID #0316138 AND PIN #0768723932 (6800 MT. HERMAN ROAD, RALEIGH, NC 27560).

Defendants.

This matter is before the Court on an unopposed motion for entry of final judgment in this condemnation action following resolution of the issues of just compensation and distribution of the condemnation deposit. Having carefully considered the motion and the record in this case, the Court hereby **GRANTS** the motion, **DIRECTS** the Clerk to distribute the condemnation deposit pursuant to this Order, and **ENTERS FINAL JUDGMENT**.

FINDINGS OF FACT

The Court hereby finds the following facts:

1. Plaintiff Raleigh-Durham Airport Authority ("RDUAA") originally filed this condemnation action in the Superior Court of Wake County, North Carolina, at Case No. 19 CV 8659, on June 26, 2019.

2. The United States of America properly removed this action to this Court on July 23, 2019.

3. This Court possesses subject matter jurisdiction over this action and *in rem* jurisdiction over the property at issue in this action and the parties' interests therein, and venue in this Court is proper.

4. The property that is subject to this condemnation action (the "Subject Property") is described as follows:

Those certain lands containing approximately 12.23 acres and lying and being in Cedar Fork Township, Wake County, North Carolina, and being more particularly described as follows:

Being all of Lot 1, containing 9.272 acres, more or less and Lot 2, containing 2.50 acres, more or less, as shown on map entitled "Recombination Plat for Ward Transformer Company, Inc." recorded in Book 1999, Page 1944, Wake County Registry, reference to which is hereby made for a more accurate description by metes and bounds and further also and being more particularly described by the boundary surveys prepared by McKim & Creed, Inc. dated March 8, 2018.

Also, being the property conveyed to Ward Transformer Co., Inc. by deeds recorded in Book 1695, Page 73, Book 1730, Page 140, Book 1910, Page 462, Book 1830, Page 457 and Book 13509, Page 1806, Wake County Registry and identified as Tax Parcel ID # 0074293 and PIN #0768731351 (6730 Mt. Herman Road, Raleigh, NC 27560) and Tax Parcel ID #0316138 and PIN #0768723932 (6800 Mt. Herman Road, Raleigh, NC 27560). Lot 1 was formerly known as 6852 Mt. Herman Road.

The Subject Property is also shown on the plat filed by RDUAA. (Dkt. 48-1.)

5. RDUAA seeks to condemn the Subject Property for a valid public purpose, namely, for use in connection with the expansion of an airport runway, including for use as a buffer zone.

6. RDUAA deposited \$2,935,200 (the "Condemnation Deposit") with the Wake County Clerk of Superior Court to be distributed to the named Defendants based upon their respective interests and controlling law. On December 11, 2019, the Wake County Superior Court transferred those deposited funds and all accrued interest thereon, then totaling \$2,935,325.65 to the Clerk of this Court. (Dkt. 42.)

7. RDUAA duly and properly filed a Memorandum of Action regarding this condemnation proceeding on June 27, 2019 with the Wake County, North Carolina, Register of Deeds, at Book 017488, Page 00981 to -93.

8. The Defendants named in this action received the notice of this action required by law. All defendants have answered other than "Unknown Personal Representatives, Heirs, and Devisees of Robert E. Ward, Jr., and Wife, Virginia P. Ward Claiming an Interest in the Deeds of Trust recorded at Book 5407, Page 855 and 858 of the Wake County, North Carolina, Register of Deeds" (the "Unknown Heirs"). RDUAA duly and properly served notice of this action upon the Unknown Heirs by publication and also mailed information about this proceeding to the sister of Virginia P. Ward. No person claiming to be an heir of Robert E. Ward, Jr., or Virginia P. Ward appeared or filed an answer other than Robert A. Ward, III, who is President of Defendant Ward Transformer Company, Inc. ("Ward Transformer").

9. By Order of this Court, the Clerk disbursed from the Condemnation Deposit the sum of \$32,648.42 to the Wake County Department of Tax Administration, which, through counsel confirmed receipt thereof. (Dkt. 41, 46.) That disbursement extinguished the lien of Wake County Department of Tax Administration and fully satisfied its lien interest in the Subject Property.

10. The Defendants claiming a primary interest in the Subject Property are Ward Transformer, which has a recorded deed to the Subject Property and the United States of America and the United States Environmental Protection Agency (collectively, the “United States”), which claim one or more liens on the property pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, *et seq.* (the “CERCLA liens”). Ward Transformer and the United States initially disputed how the Condemnation Deposit should be distributed.

11. Ward Transformer and the United States have reached a final, government-approved settlement, after publication of the Settlement Agreement in the Federal Register, public comment period, and final Government approval. Ward Transformer and the United States have agreed how the remaining Condemnation Deposit should be distributed, as well as other issues. The Settlement Agreement provides that \$2,135,200 of the deposited funds at issue be disbursed to the United States Environmental Protection Agency, and the balance of the deposited funds should be paid to Ward Transformer.

12. Distribution of the remaining Condemnation Deposit as agreed by Ward Transformer and the United States will provide full and just compensation to Ward Transformer and the United States for RDUAA's condemnation of their interests in the Subject Property.

13. Ward Transformer separately reached agreement with Defendant Young Moore and Henderson, P.A. to satisfy its lien. (Dkt. 52 at 3.)

14. No further payment of just compensation from RDUAA to any Defendant is required relative to RDUAA's condemnation of interests in the Subject Property.

15. In this action, RDUAA has added Duke Energy Carolinas, LLC ("Duke Energy") (successor in interest to Carolina Power & Light Company and Progress Energy, Inc.) and BBC I, LLC ("BBC I") as notice parties because of the public records reflect that they have easement interests in the Subject Property as follows:

a. As to Duke Energy, utility easements to Carolina Power & Light Company d/b/a Progress Energy, Inc., recorded at Book 1632, Page 128 and Book 3873, Page 196 of the Wake County Registry, and

b. As to BBC I, a sewer easement in favor of Mount Hermon Company, recorded at Book 2739, Page 495 of the Wake County Registry.

(the "Recorded Easements"). RDUAA has not sought in this action to extinguish the Recorded Easements. This action and this judgment shall not be deemed to adjudicate the validity of, or to extinguish, the Recorded Easements or to prejudice RDUAA's right to file a condemnation action regarding those easement rights in the

future or to prejudice the rights of the holders of the Recorded Easements to defend the Recorded Easements in any future action.

16. As of the filing of the condemnation complaint on June 26, 2019 (the "Complaint"), RDUAA became the fee simple owner of the Subject Property, subject only to the interests set out in Recorded Easements, and this judgment will formally pass title of the Subject Property to RDUAA as fee simple owner of the Subject Property, subject only to the interests set out in the Recorded Easements.

CONCLUSIONS OF LAW

1. This Court possesses subject matter jurisdiction of this action and jurisdiction over the Defendants and the Subject Property.

2. All Defendants have received proper notice and service of this action. The Unknown Heirs have received the notice required by law and have not appeared or asserted any interest in the Subject Property or claimed entitlement to just compensation relative to RDUAA's condemnation of the Subject Property.

3. RDUAA is authorized to condemn the Subject Property pursuant to N.C. Gen. Stat. Ch. 136, Art. 9 and 1981 N.C. Sess. Laws, Ch. 1192.

4. RDUAA has fully complied with N.C. Gen. Stat. Ch. 136, Art. 9 and 1981 N.C. Sess. Laws, Ch. 1192 relative to the condemnation of the Subject Property.

5. RDUAA's taking of the property is for a valid, authorized public purpose.

6. The Condemnation Deposit is sufficient to provide just compensation to all parties who are entitled to compensation relative to RDUAA's condemnation of the Subject Property.

7. The settlement between Ward Condemnation and the United States is final and reasonably allocates the just compensation at issue in this action.

8. No other Defendant is entitled to just compensation in this action.

9. The interests of all Defendants in the Subject Property, aside from the Recorded Easements, have been extinguished by this action.

10. RDUAA is the fee simple owner of the Subject Property, subject only to the interests set out in the Recorded Easements.

DECREE

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. Effective June 26, 2019, fee simple absolute title to the Subject Property as described in the Complaint, vested in RDUAA free and discharged of all claims and liens of every kind whatsoever, except for the Recorded Easements identified herein.

2. The Clerk of this Court shall make the following disbursements from the deposited funds in this action with the Court:

a. \$2,135,200 to the United States of America in satisfaction of the United States Environmental Protection Agency's federal liens against the subject properties, payable as follows:

U.S. Environmental Protection Agency
Superfund Payments - Region 4
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000
Memo: Site/Spill ID A4S4 CERCLA Docket No. 04-2020-2501

b. Following disbursement to the U.S. Environmental Protection Agency, the balance of funds remaining in the registry of the Court shall be disbursed to Defendant Ward Transformer Company, Inc., payable as follows:

Ward Transformer Company, Inc.
c/o Mr. George House
Brooks Pierce McLendon Humphrey & Leonard LLP
PO Box 26000
Greensboro, NC 27420

3. This Order shall constitute **FINAL JUDGMENT** as to all claims, causes of action, and parties.

4. This Order and Judgment shall be recorded in the public records of the Wake County Register of Deeds.

SO ORDERED. This 7 day of December 2020.



JAMES C. DEVER III
United States District Judge